No. 77-1254

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

CYRUS R. VANCE, SECRETARY OF STATE, ET AL.,
Appellants

v.

HOLBROOK BRADLEY, ET AL.,
Appellees

On Appeal from the United States District Court for the District of Columbia

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AMICUS CURIAE BRIEF OF AMERICAN FOREIGN SERVICE ASSOCIATION IN SUPPORT OF APPELLANTS

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PRELIMINARY STATEMENT

Pursuant to Supreme Court Rule 42, consent of the parties having been obtained, the American Foreign Service Association files this Brief as *amicus curiae* in support of the Appellants.

QUESTION PRESENTED

Whether Section 632 of the Foreign Service Act of 1946, as amended, which requires participants in the Foreign Service Retirement System to retire at age 60, violates the equal protection guarantees embodied in the due process clause of the Fifth Amendment.

STATEMENT OF INTEREST OF AMERICAN FOREIGN SERVICE ASSOCIATION

The American Foreign Service Association (AFSA) is the exclusive bargaining representative for approximately ten thousand Foreign Service employees in the Department of State and the Agency for International Development, certified under the terms of Executive Order No. 11636, *reprinted in* 22 U.S.C. § 801, at 383 (1976). The Association is also the professional association of both active and retired Foreign Service personnel from all the foreign affairs agencies. Established over fifty years ago, AFSA's current membership is 6,096.

The Association's interest in the mandatory retirement statute is to enhance the capability of the foreign affairs agencies to represent the foreign policy interests of the United States abroad and to assure an orderly process of promotion and career development within the Service, thereby encouraging employee morale and providing incentives for the highest quality performance.

SUMMARY OF ARGUMENT

The guarantee of equal protection of the laws embodied in the Fifth Amendment requires that the law apply in a like manner to individuals or groups in like circumstances. Legislative classifications which provide for differing treatment of individuals or groups are valid where such groups have different characteristics and are not similarly situated with respect to the distinction made. The Civil Service and the Foreign Service differ in many of their respective terms and conditions of employment, and these groups of employees are not similarly situated with respect to the requirement for mandatory retirement at age 60 in the Foreign Service.

Moreover, even if the Foreign Service and the Civil Service were similarly situated, mandatory retirement

of Foreign Service employees at age 60 serves the legitimate needs of the government in at least two ways. *First*, the government's need to maintain a balanced workforce in the foreign affairs agencies, with a reasonable distribution of employees of varying ranks, is served by the requirement that Foreign Service employees retire by the age of 60. *Second*, the long periods of overseas duty which are required in the course of a Foreign Service career can have debilitating effects on employees. Foreign Service employees are needed worldwide and must be able to serve the needs of the government's foreign policy under virtually any circumstances. The Congress chose a rational means of meeting these needs by establishing age 60 as the mandatory retirement age for Foreign Service employees.

Legislative history of the Foreign Service retirement provisions indicates that the Congress had both purposes in mind in enacting an earlier retirement age for Foreign Service employees than the applicable age for Civil Service personnel. Relevant portions of the reports of the committees of Congress and of Congressional debates reflect these purposes.

The decision of this Court in *Massachusetts Board of Retirement* v. *Murgia*, 427 U.S. 307 (1976), is controlling in this case. The Court there upheld a requirement that uniform state police officers retire at age 50, finding that the state had a legitimate purpose in ensuring that its police officers would be able to respond to the demanding requirements of the job, and that retirement at age 50 was a rational means of meeting the state's needs. The United States has an equally legitimate need to maintain a fully effective complement of Foreign Service employees able to serve under sometimes difficult and hostile conditions, and the legislative choice of mandatory retirement at age 60 as a means to meet those needs was a rational choice. Compensatory features are

included in other provisions of the retirement system. Mandatory retirement at age 60 does not deny appellees the equal protection of the laws guaranteed by the Fifth Amendment.

ARGUMENT

I. THE FOREIGN SERVICE AND THE CIVIL SERVICE ARE NOT SIMILARLY SITUATED WITH RESPECT TO THE MANDATORY RETIREMENT AT AGE 60 PROVISION OF THE FOREIGN SERVICE ACT.

The district court erred when it found no rational basis for the requirement that Foreign Service personnel retire at age 60, whereas Civil Service employees are not subject to mandatory retirement until the age of 70. *Bradley* v. *Vance*, 436 F.Supp. 134 (D.D.C. 1977). A rational basis clearly does exist for the distinction between Foreign Service and Civil Service employees which justifies the earlier mandatory retirement age for the Foreign Service. As a threshold matter, however, the district court erred in its implicit assumption that Foreign Service and Civil Service employees are similarly situated with respect to the mandatory retirement at age 60 provision of the Foreign Service Act. Only if these employees are similarly situated does the earlier mandatory retirement age require a rational basis to support the legislative distinction.

The Constitution requires that individuals in like circumstances be treated alike under the law. It does not guarantee equal treatment to persons in different circumstances. It does not preclude the Congress from establishing a separate Foreign Service of the United States as a category of government employment, and from providing for many areas of unequal treatment of Foreign Service and Civil Service employees. Where a particular category of government employment has been

created to meet particular needs, it is inevitable that the conditions of employment in that Service will differ from certain of the conditions of employment in another category established to meet other needs. The Foreign Service was created as a unique type of employment, designed to meet the particular needs of the government in the implementation of foreign policy. "The Constitution does not require things which are different in fact or opinion to be treated in law as though they were the same." *Tigner* v. *Texas*, 310 U.S. 141, 147 (1940).

With the passage of the Act of May 24, 1924, ch. 182, 43 Stat. 140 (the Rogers Act), Congress consolidated the separate Diplomatic and Consular Services into a unified Foreign Service of the United States. The Rogers Act provided the basis for the establishment of a career Foreign Service corps. It was to be composed of individuals selected on the basis of merit, who would be trained as professionals to represent the interests of the United States abroad in the areas of foreign policy and diplomacy and provision of consular services. The Foreign Service is excepted from the competitive Civil Service. Foreign Service personnel are subject to a unique and highly competitive set of personnel policies and procedures designed to meet the special needs of the government in the implementation of foreign policy.

In enacting the Foreign Service Act of 1946, 60 Stat. 999 (codified at 22 U.S.C. §§ 801 to 1158 (1976)), the Congress again articulated its objectives, including among them the desire "(1) to enable the Foreign Service effectively to serve abroad the interests of the United States; . . . (4) to provide improvements in the recruitment and training of the personnel of the Foreign Service . . . and (9) to codify into one Act all provisions of law relating to the administration of the Foreign Service." 22 U.S.C. § 801 (1976).

Foreign Service employees are required as a condition of employment to accept assignment in any area of the world in the interests of the Service. A Foreign Service employee can expect to spend the majority of his or her career overseas, and is likely to serve in several hardship or unhealthful posts in the course of such a career. An employee is normally transferred every three or four years, and may be transferred at any time, frequently with little or no advance warning. The Service is very mobile, and it seeks and hopes to retain highly-motivated individuals with a primary commitment to the best interests of the United States. Such service exacts a high price in terms of family stability, educational and employment opportunities for dependents, long-term health care and medical problems, and terrorist dangers. Mandatory retirement at age 60 is an integral part of the personnel laws and regulations applicable to Foreign Service employees.

Foreign Service employment and Civil Service employment differ in a number of respects. For example, Foreign Service employees are appointed to a class (a category analogous to a military rank), rather than to a position, as would be typical in the Civil Service and most private employment. 22 U.S.C. §§ 867, 869, 870 (1976). Assignments are made in the interests of the Service; employees are not hired for a particular post. 22 U.S.C. §§ 906, 909, 923, 937 (1976). Foreign Service officers are subject to selection-out (termination) for excessive time in a given class, or for performance which fails to meet the standard of the class, neither of which are applicable to Civil Service personnel. 22 U.S.C. § 1003 (1976).

There are numerous differences in the Foreign Service and Civil Service retirement systems, with the Foreign Service system somewhat more advantageous in a number of respects. Foreign Service employees covered under the

Foreign Service Retirement System may elect to retire at age 50 with 20 years' service. 22 U.S.C. § 1006 (1976). Civil Service personnel must generally wait until age 60 to retire with 20 years' service. 5 U.S.C. § 8336 (1976). Moreover, Foreign Service employees are entitled to a somewhat larger annuity computed by multiplying the number of years of service (not exceeding thirty-five years) by a figure representing two percent of the highest average salary for three consecutive years. 22 U.S.C. § 1076(a) (1976). Computation of annuities for Civil Service personnel is based upon a figure representing less than two percent of an employee's salary for the first ten years of service, followed by a figure representing two percent of salary for the remaining years. 5 U.S.C. § 8339(a) (1976). This distinction causes fairly substantial differences in the amount of the pension due to an employee. Other differences also exist between the two systems, including a provision in the Foreign Service Act for extra credit toward retirement which may be earned when assigned to overseas posts classed as unhealthful. 22 U.S.C. § 1093 (1976).

These legislative differences make it apparent that the Foreign Service and the Civil Service are not similarly situated with respect to the requirement that Foreign Service employees retire at age 60. Equal protection of the law does not require that these different groups of individuals, employed under different conditions and for different purposes, be treated alike.

II. MANDATORY RETIREMENT FOR FOREIGN SERVICE EMPLOYEES AT AGE 60 IS CONSTITUTIONAL BECAUSE IT BEARS A RATIONAL RELATIONSHIP TO A LEGITIMATE GOVERNMENTAL PURPOSE.

This Court has held that a discrimination or distinction is constitutionally permissible if that distinction is rationally related to a legitimate state concern. In *Dandridge* v. *Williams*, 397 U.S. 471, 485 (1970), the Court held that "[i]n the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect." Where a particular classification does not interfere with the exercise of a fundamental right or operate "to the peculiar disadvantage of a suspect class," strict scrutiny of that classification is not required. *Massachusetts Board of Retirement* v. *Murgia*, 427 U.S. 307, 312 (1976); *Accord, San Antonio School District* v. *Rodriguez*, 411 U.S. 1, 16 (1973); *McGowan* v. *Maryland*, 366 U.S. 420, 425-26 (1961).

The Congress had a dual purpose in requiring that employees covered under the Foreign Service Retirement and Disability System retire at an earlier age than employees in the Civil Service. This distinction has existed since the enactment of the Rogers Act in 1924, and the Congress has repeatedly articulated its purposes when the law has been amended over the past fifty years. The government has a valid interest in maintaining a Foreign Service which is balanced by age and rank, and the earlier mandatory retirement age serves the needs of the Service in providing opportunity for upward mobility and progressive career development for other employees in the Service. The government has an equally legitimate need to be assured of the ability of its Foreign Service employees to serve at any post overseas, often at hardship posts on short notice.

It was not irrational for Congress to require Foreign Service employees to retire at age 60 in furtherance of these legitimate governmental interests. Moreover, the burden of proving a lack of a rational basis for such a distinction properly should fall to the party seeking to show the lack of rationality. The district court's ruling was based only upon the limited record before it on cross-motions for summary judgment. The court was in error in substituting its judgment on the needs and requirements of the Foreign Service for the judgment of the Congress.

A. The Government Has a Valid Interest in Maintaining a Foreign Service Balanced by Age and Rank.

The Foreign Service Act provides for ten classes of Foreign Service Officers, including Classes 8 through 1 and the classes of career minister and career ambassador. 22 U.S.C. § 867 (1976). There are eight classes of Foreign Service Reserve Officers, 22 U.S.C. § 869 (1976), and ten classes of Foreign Service Staff Officers and employees, 22 U.S.C. § 870 (1976). Initial appointment is typically in the lower ranking classes.

The number of Foreign Service employees and the number of positions in the foreign affairs agencies are established by executive request and legislative disposition in the authorization and appropriations process. The size of the Foreign Service has remained relatively stable in recent years.

Promotions in the Foreign Service are made in accordance with the findings of Selection Boards, specially convened on an annual basis to evaluate the performance of employees in a given class and to prepare a rank order list by class, or by specialization within a class, of those employees under review. 22 U.S.C. § 993 (1976). Selection Boards are guided in their function by Precepts,

which are the result of negotiation between agency management and the exclusive representative organization.

The number of promotions available to employees in each class (or specialty within a class) in the Foreign Service is dependent upon the total permitted by budget and the vacancies in corresponding positions at the next higher class. Promotions are available to a given group of employees only when employees in the class or classes above leave their class—by retirement, death, resignation, separation, selection-out, or promotion to the next higher class. When a Class 1 employee retires at age 60, that retirement opens up possible career development and promotion opportunities for people in each of the classes below Class 1, as each class starting with the lowest in rank has the opportunity to have one employee advanced to the next higher class. When an employee does not retire as anticipated, those promotion opportunities which would have been available upon the employee's retirement are all foreclosed. The foreign affairs agencies may not permit the number of persons advanced to senior classes to become disproportionate to the number of positions available to the agencies at the senior levels. Opportunities for advancement are created only when there are vacancies in higher classes; where no vacancies are available, the detrimental effect is felt throughout the Service. The preponderant number of vacancies at the senior level are created by retirements. This direct linkage makes mandatory retirement a necessary tool in permitting an appropriate distribution of personnel at various ranks and ages within the Service in order to fulfill the various needs of the agencies and to allow for rational planning of personnel and resources.

The Foreign Service requires a workforce with experiences and skills that are continually relevant to changing international developments. Such a system requires a career development process which moves employees

through an evolving series of assignments, both abroad and in the United States. The process of continuous updating and renewal of skills is based upon a promotion-up or selection-out system applicable to Foreign Service officers, which maintains the best-qualified officers readily available at all grade levels. In this system, Foreign Service officers below the class of career minister are subject to selection-out of the Service should their performance not continue to meet the standard required of the officer's class, or should the officer fail to be promoted to the next higher class within a given time period prescribed by regulation. 22 U.S.C. § 1003 (1976). The foreign affairs agencies must use selection-out on a greater or lesser basis, depending on their personnel needs, the time an officer may remain in class, and the maximum period officers tend to remain in the Service. If attrition from the Service by retirement ceases to provide the needed vacancies in the Service, it is virtually inevitable that the agencies will have to rely more heavily upon the selection-out system to provide for internal mobility and to permit the requisite development and advancement of officers within the Service. This may in fact force officers in the middle of their careers out of the Service when they fail to secure promotions within the requisite time period, while officers at ages 60 to 70 may remain in the Service. Since the size of the personnel system is relatively stable, providing a benefit to officers over the age of 60 by permitting them to remain within the system necessarily takes away the same benefit from employees under the age of 60, who lose promotion opportunities and may become subject to selection-out for failure to secure promotion within the requisite time. Moreover, the more junior employees would be too young to be eligible for a pension. Such stagnation in the personnel system would force mid-career employees to seek employment elsewhere, due to the lack of opportunity

in the Foreign Service. It also limits the efforts of the Foreign Service to become more "broadly representative of the American people" as required by the objectives of the Foreign Service Act, 22 U.S.C. § 801 (1976).

Mandatory retirement at age 60 enables the Foreign Service to maintain a balanced complement of employees, rationally distributed by qualifications, age, and rank, to staff its positions. Loss of this provision may severely harm employees currently in the Foreign Service. The retirement provision helps insure that persons entering the Service at the lower ranks will have realistic hopes of advancement in the course of their careers. It encourages the highest performance as employees strive to be chosen for promotion. It facilitates a continuing renewal of employee experience and skills. These are legitimate needs of a large government agency, and mandatory retirement at age 60 rationally furthers these goals.

B. The Government Has a Legitimate Interest in Maintaining a Complement of Foreign Service Employees Vigorous and Capable of Handling Frequent Transfers and Long Overseas Assignments.

The foreign affairs agencies have limited resources, in terms of personnel and finances, to meet the requirements imposed upon them by the President and by Congress. Employees are required to be available for service worldwide, and individual considerations often must be submerged by the needs of the Service. Medical problems may be cumulative after long years of overseas service. The Court recognized in *Massachusetts Board of Retirement* v. *Murgia*, 427 U.S. 307 (1976), that "physical ability generally declines with age." 427 U.S. at 315. Selecting a cut-off point for mandatory retirement inevitably serves to require retirement of some individuals who remain physically capable of performing the work required. Age is not a suspect classification, and governmental employment is not a fundamental right. *Id.* at 313. It is necessary only for the Court to find that the distinction drawn by Congress is a rational distinction. *Dandridge* v. *Williams*, 397 U.S. 471 (1970).

The function of the Foreign Service employee overseas is to represent the interests of the United States abroad, primarily in the areas of foreign policy and national security. While the Foreign Service has a number of attractions as a career, and life in selected posts can be pleasant under normal circumstances, situations can change dramatically for the worse, often on short notice. Foreign Service employees may be caught in civil wars (as in Angola), stationed in areas of the world plagued by unrest (as in Zaire), involved in disaster relief operations (as in Tananarive), forced to evacuate post on little or no notice (as in Saigon and Vientiane), and involved as the target of terrorist attack or kidnappings (as in Beirut). It was not irrational for the Congress to select age 60 as the age beyond which fewer employees could withstand the rigors of constant transfers and the stresses which accompany life in another culture, sometimes in a hostile and rapidly changing environment.

C. The Establishment of 60 Years of Age as the Cut-Off Mark Is a Rational Means to Achieve the Government's Legitimate Purposes.

The Congress is not required to select the best possible means for determining which employees remain suited to continued Foreign Service employment as they age. It is incumbent upon the Congress only to choose a rational means of making this determination. If the means chosen by Congress are not perfect, that does not deprive appellees of equal protection of the laws under the Constitution. Foreign Service employment can be very demanding, and the Congress has chosen an even-handed

and workable means of determining when Foreign Service employees should be required to retire.

Mandatory retirement at age 60 serves to open up assignment and promotion opportunities for employees in the Service at the junior and middle levels. Such opportunities in turn give the agencies openings at the lower levels, where recruitment and training of new hires can be accomplished. The government needs to have a balanced distribution of employees in the Foreign Service, so that at any given time the agencies are staffed with employees of different ranks, different abilities and specialties, and different ages. If older officers over-encumbered the senior and middle ranks, middle and junior level officers might in consequence be forced out of the Service for failure to secure promotion within the requisite time period. Such attrition could eventually result in a Service without its necessary complement of experienced officers ready to be advanced to replace the current senior officers when they eventually retire voluntarily or are themselves selected out. The choice of age 60 to provide this necessary turnover in the personnel system was not an irrational decision.

III. LEGISLATIVE HISTORY SUPPORTS THE ASSERTION THAT CONGRESS INTENDED THE EARLIER FOREIGN SERVICE RETIREMENT AGE TO SERVE THIS DUAL PURPOSE.

Congress first created a separate retirement program for Foreign Service officers by the Act of May 24, 1924, ch. 182, 43 Stat. 140. The Act provided for mandatory retirement of Foreign Service officers at the age of 65, although the President in his discretion might retain an officer on active duty for an additional five years. 43 Stat. 144. Mandatory retirement was thus set five years earlier for Foreign Service employees than for Civil Service employees. *See* Act of May 22, 1920, ch. 195,

41 Stat. 614. The reason for the earlier mandatory retirement age was clearly explained by the sponsor of the 1924 Act, Representative John Jacob Rogers, as reflected in the following exchange during Congressional deliberations:

> Mr. ROGERS of Massachusetts. The foreign-service officer is going hither and yon about the world giving up fixed places of abode often rendering difficult and hazardous service of prime importance to the United States. . . .
>
> Mr. CELLER. You make the retiring age 65 years?
>
> Mr. ROGERS of Massachusetts. Sixty-five.
>
> Mr. CELLER. And the clerk in Washington in the field service is retired at 70 years of age?
>
> Mr. ROGERS of Massachusetts. There is added a provision that the Secretary of State may retain any man for five years if he finds it wise for the country to so retain him.
>
> I call to the attention of the gentleman the fact that the kind of service which these men must render involves going to the Tropics; it involves very difficult and unsettling changes in the mode of life. The consensus of opinion was that the country was better off to retire them, as a general rule, at 65. [Applause] 65 *Cong. Rec.* 7564-7565 (1924).

Over the years the Congress has provided for coverage of most other categories of Foreign Service personnel under the Foreign Service Retirement and Disability System. In 1960, at the time that Foreign Service Staff officers and employees were brought under the coverage of the Foreign Service retirement program, the Congress explained its intention:

> The Foreign Service retirement system is designed to give recognition to the need for earlier retirement age for career Foreign Service personnel who spend

> the majority of their working years outside the United States adjusting to new working and living conditions every few years. Staff personnel who serve for any length of time are subject to the same conditions. It is the committee's opinion that the advantages of the Foreign Service retirement system should be extended to those staff employees who give an indication of making their career in the Service. . . . Had these individuals remained under the civil service retirement system, they would not have had to retire mandatorily until age 70. A number of them would prefer to retire earlier while, in other cases, it is in the interest of the Service and of the individual that they retire earlier. H.R. Rep. No. 2104, 86th Cong., 2d Sess. 31, *reprinted in* [1960] U.S. Code Cong. & Ad. News 3425.

The Foreign Service Retirement System was established in recognition of the fact that the administration of overseas employees posed different problems than the administration of a domestic service. While the hardships involved and the need for rational personnel administration justified an earlier retirement age for Foreign Service personnel, Congress compensated for this inequality by making Foreign Service retirement somewhat more advantageous than Civil Service retirement. When Foreign Service personnel of the Agency for International Development were finally included under the Foreign Service Retirement System in 1973, the Congress emphasized that the Foreign Service Retirement program "provides more favorable conditions for re-retirement to compensate for some of the personal difficulties arising from overseas service." H.R. Rep. No. 93-388, 93rd Cong., 1st Sess. 46, *reprinted in* [1973] U.S. Code Cong. & Ad. News 2845. Earlier retirement helps to ensure that the Service maintains employees with the intellectual and physical vitality necessary for continued duty overseas, especially in the lesser developed countries where medical facilities, living and working

conditions are less favorable than in the United States. Congress struck a balance which was thrown out of equilibrium when the district court invalidated one selective factor in that balance.

Earlier mandatory retirement also serves the Congressional purpose of making the Foreign Service both more attractive and more effective by improving the opportunities for advancement within the Service. When Congress enacted the Foreign Service Act of 1946, 60 Stat. 999, the mandatory retirement age was lowered from age 65 to age 60. 22 U.S.C. § 1002 (1976). At this time the Congress explicitly modeled the Foreign Service promotion system upon that of the Navy, requiring an "up or out" promotion process for continued tenure of officers in the Service. The personnel system was "designed to secure an orderly flow of promotions unimpeded by promotion 'humps' and exaggerated spreads between minimum and maximum ages in class, and to bring men to the top while still vigorous and receptive to new ideas." H.R. Rep. No. 2508, 79th Cong., 2d Sess. 85 (1946). According to the House Report accompanying the bill,

> The sections under this title prescribe the criteria as to length of service in classes which will determine whether officers are selected out or retired. In administration the length of service allowed in each class and the incidence of separations would be arranged to assure a reasonable pyramid of promotion. The Department of State plans call for a correctly balanced service that would be constructed so that the size of the various classes would correspond with the distribution of the work load of the Service. Most separations should occur near the top (for age or through voluntary retirement) or at the bottom, while the men selected out in the middle classes and at middle ages would be limited. H.R. Rep. No. 2508, 79th Cong., 2d Sess. 90 (1946).

Thus, mandatory retirement at age 60 serves the legitimate purpose of providing room for normal career advancement among employees of the Service.

In *Schlesinger* v. *Ballard*, 419 U.S. 498 (1975), this Court recognized the validity of a statute designed to serve the Navy's personnel needs by mandatory attrition. The Court found that "the operation of the statutes in question results in a flow of promotions commensurate with the Navy's current needs and serves to motivate qualified commissioned officers to so conduct themselves that they may realisticaly look forward to higher levels of command." *Id.* at 510. The Court upheld a statutory distinction between male and female commissioned officers regarding the allowable time period of commissioned service prior to mandatory discharge for want of promotion. Finding that the "up or out" philosophy maintained effective leadership by increasing competition and by providing incentive to more junior officers and opportunities for promotion, and recognizing that the determination of the means by which the Armed Forces maintains the military preparedness of the United States rests primarily with Congress, the Court found no violation of the due process clause of the Fifth Amendment in the means chosen. *Id.* at 502, 503, 510.

This need is served in some measure in the foreign affairs agencies by selection-out, but it is also served in large measure by the choice of age 60 as the age for mandatory retirement. Selection-out cannot serve the same purpose, for not all employees are subject to selection-out under the terms of the Foreign Service Act. 22 U.S.C. § 1003 (1976). This choice by Congress of a means to assure an orderly flow of promotions and a reasonable distribution of employees of various ranks within the Foreign Service was a permissible means to serve the foreign policy needs of the United States. This is primarily a function of the Congress, and the choice made is rationally based to serve these needs.

IV. THIS COURT HAS PREVIOUSLY HELD VALID A STATE COMPULSORY RETIREMENT SYSTEM AT AGE 50. *MASSACHUSETTS BOARD OF RETIREMENT* v. *MURGIA*, 427 U.S. 307 (1976).

This Court recently upheld a requirement that uniformed state police officers retire at age 50, rejecting the judgment of the district court in that case that mandatory retirement at that age denied appellee police officer the equal protection of the laws in violation of the Fourteenth Amendment. *Massachusetts Board of Retirement* v. *Murgia*, 427 U.S. 307 (1976). In so ruling, the Court specifically agreed "that rationality is the proper standard by which to test whether compulsory retirement at age 50 violates equal protection." *Id.* at 312.

Accordingly, the requirement for mandatory retirement of Foreign Service personnel at age 60 need only meet the test of rationality. The legislative history of the retirement program clearly shows that Congress was concerned about the ability of the Foreign Service to adequately meet its personnel staffing needs in order to best carry out its substantive responsibilities. As the Court recognized in *Murgia*, there is a relationship between advancing age and ability to perform on the job. *Id.* at 310-11. Since most persons will reach age 60 at the conclusion of a Foreign Service career, the law cannot be said to operate "to the peculiar disadvantage of a suspect class." *Id.* at 312.

The age classification is rational, in that it establishes an age beyond which, in the experience of the foreign affairs agencies, fewer employees can be expected to retain their competence to perform effectively in the representation of the interests of the United States abroad, and after which their continued retention in employment poses increasing problems in the administration of Foreign Service personnel. Such a classification may be less

than perfect, but it is reasonable. The holding in *Murgia* is controlling here.

CONCLUSION

For the foregoing reasons the decision of the district court should be reversed.

Respectfully submitted,

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Foreign Service Association
as *Amicus Curiae*

July 20, 1978